



Administrative Policies and Procedures: 1.16

Subject:	Internal Affairs Investigations
Authority:	TCA 8-30-324; TCA 10-7-504; TCA 37-5-106; TCA 37-5-511, TCA 7-86-201, Rules of the Tennessee Bureau of Investigation, Chapter 1395-1-1.07
Standards:	DCS Standards of Professional Practice: 3-501, 7-200A, 8-203B, 9-202, 9-303; Council of Accreditation (COA): RPM 2
Application:	To All Department of Children's Services Employees, Foster Parents and Contract Providers/Agencies.

Policy Statement:

All investigative activities of the Internal Affairs Division (IA) of the Office of the Inspector General (OIG) shall be limited to matters relating to the management and operation of DCS as authorized by the Commissioner of the Department of Children's Services (DCS) or designee. All practices and the information obtained shall be classified as **CONFIDENTIAL** and shall be handled accordingly.

Purpose:

To investigate allegations of malfeasance, misfeasance, nonfeasance and violations of rules, policies, and procedures concerning the management and operation of the DCS. To report findings through the OIG to the Commissioner. To conduct fingerprint analysis on prospective care givers and to provide access to the National Crime Information Center (NCIC) for the purpose of name based criminal background checks under exigent circumstances.

Procedures:

- A. Investigations and Investigative Inquiries**
- REQUESTING AN INVESTIGATION:** A citizen, employee, foster parent, provider, or child in DCS custody may request an Internal Affairs (IA) investigation. Such a request may be submitted by any means of communication (in person, by telephone, e-mail, etc.) to the IA Grand Region Supervisor (RS) as identified below:

Grand Region	DCS Regions	Telephone Number
EAST	East Tennessee, Knox, Northeast and Smoky Mountain	(865) 475-8504

Grand Region	DCS Regions	Telephone Number
UPPER CUMBERLAND	Hamilton, Southeast and Upper Cumberland	(865) 425-4528
MIDDLE TENNESSEE	Davidson, Mid-Cumberland and South Central	(615) 741-4487
WEST TENNESSEE	Shelby, Northwest and Southwest	(901) 726-6872

Additionally, requests for investigations may be made through supervisors, managers or directly to the Office of the Inspector General (OIG) or the Director of Internal Affairs.

2. **AUTHORIZING AN INVESTIGATION:** The OIG or IA Director, on behalf of the Commissioner, will determine when and if an investigative inquiry is appropriate. An investigative inquiry is a review of the facts associated with an event or a situation to determine whether a full-scale investigation is warranted, consultation or technical assistance is needed, or referral to the appropriate managers for administrative action is indicated. Only the IA Director, OIG or Commissioner can authorize, deny, or terminate an IA investigation. The IA Director will brief the OIG and Commissioner regarding requests for and status of IA investigations.
3. Listed below are some allegations that would require an IA investigation:
 - ◆ Arrest of Employee;
 - ◆ Breach of Confidentiality;
 - ◆ Destruction of State Property;
 - ◆ Excessive Force;
 - ◆ Failure to Report;
 - ◆ Falsification of an Official Document;
 - ◆ Fraud/Embezzlement;
 - ◆ Harassment;
 - ◆ Loss of State Property;
 - ◆ Medication Errors;
 - ◆ Misuse of Position/Authority;
 - ◆ Misuse of State Property;
 - ◆ Negligence/Incompetence;
 - ◆ Physical Assault;
 - ◆ Threats;

	<ul style="list-style-type: none"> ◆ Possession/Distribution of Contraband; ◆ Rape; ◆ Runaways-Social Service and Juvenile Justice; ◆ Sexual Assault; and ◆ Sexual Misconduct <p>4. NOTIFICATIONS: The assigned IA Investigator will contact the appropriate Regional Administrator or senior management official to advise them that an investigation has been initiated, unless such notification would jeopardize the integrity of the investigation.</p> <p>5. ACCESS: IA Investigators are to be granted access to any records, documents and/or personnel deemed necessary by the Investigator to be pertinent to the successful completion of the authorized investigation. Every effort should be made by the region, facility, agency to provide a private location to conduct interviews and/or review documentation. All aspects of the investigation must be treated as CONFIDENTIAL.</p> <p>6. INTERVIEWS: Any DCS employee who willfully refuses or fails to appear before the investigator may forfeit his/her position and may not be eligible for appointment to any position in the state service (TCA 8-30-324). Every effort will be made to conduct interviews in a private location that will protect the integrity of the investigation and interviewee. Each interview will be audio-recorded unless such recording is not feasible due to location or other environmental restrictions. Every effort will be made to schedule interviews at a time and place that is reasonable and practical to the efficient completion of the investigation. Each individual scheduled for an interview needs to report to the designated place in a timely manner. Interviewees may be required to submit a written statement or affidavit in regards to their knowledge or actions as they relate to the investigation.</p> <p>7. CRIMINAL ACTIONS: IA Investigators will coordinate with their RS, IA Director, and appropriate jurisdictional authorities as required whenever any criminal activities are uncovered during an administrative investigation.</p>
B. Results of Investigations and Reports	<p>1. The Regional Administrator, Youth Development Center Superintendent, DCS Group Home Director or senior management representative will be orally apprised of the status of the investigation before the investigator leaves the facility unless such notification would adversely affect the integrity of the investigation.</p> <p>2. Investigative reports, attachments, case notes, etc., are classified as CONFIDENTIAL documents and will not be open to inspection by members of the public. A DCS employee, however, will be allowed to inspect such investigative records/reports if the records/reports form the basis of an adverse action against the employee (TCA 10-7-504). The employee must submit a written request to the IA Director.</p>

	<ol style="list-style-type: none">3. Every effort will be made by investigators to complete investigations within thirty (30) calendar days after receiving the authorization to conduct an investigation.4. Completed investigative reports will be routed to the Commissioner/Deputy Commissioner through the OIG. Additional copies may be provided to the appropriate Regional Administrator, Youth Development Center Superintendent, Community Residential Center Director, or responsible Central Office Staff for contract agencies and providers. Reproduction of these CONFIDENTIAL reports must be specifically authorized in writing by the OIG or IA Director.5. Investigative reports will contain no recommendations for disciplinary action or administrative sanctions.6. IA is to be informed before any employee disciplinary action occurs during an on-going investigation of that employee, whether or not that action is related to the specific allegations under investigation. Additionally, if management agrees to accept a resignation from an employee who is under active Internal Affairs investigation, the resignation must indicate the employee is ineligible for re-hire within DCS.7. Investigative reports will reflect one of the four (4) case closure classifications for each allegation investigated:<ul style="list-style-type: none">◆ UNFOUNDED: No factual basis that the allegation occurred.◆ NON-SUSTAINED: The evidence does not meet the burden of proof (preponderance of the evidence) to either support or refute the allegation.◆ SUSTAINED: The evidence supports and meets the burden of proof that the allegation occurred.◆ EXONERATED: The event reported did occur; however, the employee was authorized by law and/or policy.
C. Duties and Responsibilities	<ol style="list-style-type: none">1. IA Investigators will conduct investigations in an objective and impartial manner to ensure the integrity of the employee, investigation, IA and DCS is protected.2. Investigators have an obligation to investigate or review all allegations regarding violations of rules, policies, or procedures surrounding the operation and management of DCS. This obligation to investigate includes not only the specific allegation, but any and all violations uncovered throughout the investigative process.3. DCS employees are required to be truthful, cooperative and follow the directives of IA Investigators.
D. Evidence	<p>Investigators may determine it necessary to take possession of documents, property, or other items associated with an Internal Affairs investigation. Investigators will provide a receipt to the person(s) from whom the evidence was obtained. Consult with the IA Director and/or DCS Legal anytime there is a question about the legality of obtaining evidence.</p>

E. Judicial and Administrative Hearings	Investigators will present testimony and/or records at judicial hearings or other administrative hearings as required. The submission of IA case files will be coordinated with DCS Legal. The OIG and IA Director and RS will be notified of all subpoenas for records and/or compulsory investigator attendance at hearings.
F. Search and Seizure	Searches and seizure of items on State property as part of an IA investigation do not require the person's consent. However, before conducting these searches, the investigator must coordinate with the IA Director or OIG.
G. Absconder Recovery Program (ARP)	IA will operate an Absconder Recovery Program (ARP) that will coordinate with regional DCS employees, law enforcement agencies and DCS contract agencies in the identification, apprehension and prevention of absconders from DCS custody. Specific responsibilities for the absconder recovery program are detailed in DCS Administrative Policy <u>31.2, Responsibilities Regarding Runaways, Absconders and Escapees</u> .
H. Fingerprint Analysis	<ol style="list-style-type: none"> 1. IA will only accept electronic submission of fingerprint samples through a Tennessee Bureau of Investigation authorized vendor, with the exception of DCS Youth Development Centers. IA Investigators will be responsible for coordinating and analyzing the fingerprint submissions from these institutions. 2. IA will analyze fingerprint results on DCS employees and other individuals who provide direct care for children in the custody of DCS and provide results of that analysis to the appropriate regional personnel or agency contact. 3. The regional DCS office or contract agency will ensure DCS Form <u>CS-0668 Authorization for Release of Information to DCS</u>, is properly completed prior to fingerprint submission. The completed form will be retained at the work site and will be attached to fingerprint analysis provided by IA. 4. IA will verify and process all billing invoices associated with the fingerprinting processing.
I. Tennessee Information Enforcement System	<ol style="list-style-type: none"> 1. IA will maintain a connection with the National Crime Information Center (NCIC) to conduct Purpose Code X III Name Based Criminal background checks under exigent circumstances through the Tennessee Information Enforcement System (TIES) of the Tennessee Bureau of Investigation (TBI). 2. IA will ensure compliance with all requirements of the TIES program to include the appointment of a Terminal Agency Coordinator (TAC) and a sufficient number of certified operators to provide TIES access to the department on a twenty-four-hour, seven-day-a-week basis. 3. The TAC will ensure compliance with the Federal Bureau of Investigation (FBI) and TBI Criminal Justice Information System (CJIS) Security Policies.
J. Name Based Criminal Background Checks (Code X)	<ol style="list-style-type: none"> 1. IA will conduct <i>Purpose Code X III Name Based Background Checks (Code X)</i> through the <u>National Crime Information Center (NCIC)</u> for prospective care providers under exigent circumstances.

	<ol style="list-style-type: none"> 2. <i>Code X</i> background checks may be requested only by authorized personnel for the emergency placement of children that cannot wait for the results through the routine fingerprint system. 3. Regional Administrators may authorize personnel to request <i>Code X</i> background checks by submitting the signature of the employee acknowledging that he/she has received a copy, read and understands the <u>Judge Manuel Real Memorandum</u> regarding confidentiality of <i>Code X</i> information. 4. If the child is placed in the home of the individual(s) for whom the <i>Code X</i> was conducted, those adults must be fingerprinted within fifteen (15) calendar days of the request. If the child is not placed in the home, fingerprint submissions are not required. The requestor of the <i>Code X</i> is responsible to provide IA with written information regarding the status of the fingerprinting of those adults and/or the status of the placement within fifteen (15) days of the request.
K. Computerized Voice Stress Analysis (CVSA)	<ol style="list-style-type: none"> 1. IA will conduct <i>Computerized Voice Stress Analysis Examinations (CVSA)</i> in association with authorized Internal Affairs investigations. A CVSA examination is an investigative tool to aid investigators in the elimination of suspects, and verification of events/statements. 2. CVSA examinations are voluntary and the subject must complete a <u>Truth Verification Release</u> form prior to examination. 3. The CVSA examiner must provide written results of the examination to the requesting investigator. Results of the examination become part of the Internal Affairs investigative case file and as such are classified as CONFIDENTIAL. 4. All examiners must hold current certification through the <u>National Institute for Truth Verification (NITV)</u>. All CVSA equipment must be kept current with NITV standards. 5. All CVSA examinations must have prior approval of the Director of IA.

Forms:	<u>CS-0668 Authorization for Release of Information to DCS</u> All other official forms used for IA purposes will <u>not</u> be <u>placed</u> on forms web page.
Collateral documents:	<u>DCS Policy 31.2, Responsibilities Regarding Runaways, Absconders, and Escapees</u> <i>Judge Manuel Real Memorandum</i>

Glossary:	
Malfeasance:	The performance by a public official of an act that is legally unjustified, harmful, or contrary to law; wrongdoing of an act in violation of public trust; misconduct
Misfeasance:	A wrong, actual or alleged, arising from or consisting of affirmative action; the wrongful performance of a normally lawful act; the wrongful and injurious exercise of lawful authority; improper and unlawful execution of an act that in itself is lawful and proper.
Nonfeasance:	The omission of some act that ought to have been performed; failure to perform an act that is either an official duty or a legal requirement; failure to act when under an obligation to do so; refusal (without sufficient excuse) to do that which it is a legal duty to do.
Exigent Circumstances:	In regards to this policy would mean an <u>emergency situation</u> where a name-based background check is required to safely place a child outside of his/her home.
Purpose Code X III Name-based background check through the National Crime Information Center:	This is a name-based search of the criminal records located in the National Crime Information Center. <u>Must meet exigent circumstances</u> . If child is placed in the home, the subject of the background check must be fingerprinted within fifteen (15) calendar days of background search.